

Portfolio Committee on Environmental  
Affairs and Tourism  
**Committee Secretary**  
Att: Ms Albertina Kakaza  
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**Date:** 2 November 2007

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Dear Ms Kakaza

**NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT ACT [B36-2007];  
ESKOM SUBMISSION**

The National Environmental Management Amendment Bill, as published in Government Gazette No. 30142 of 3 August 2007, has reference. In connection with the public hearings to be held on 6 November 2007, please find below Eskom's submission.

**Paragraph 9, substitution of Section 43**

The NEMA Amendment Bill seeks to extend the right to appeal to any person and not an "affected" person. The purpose served by granting the right to appeal to an "affected" person is that a person must have participated in the EIA process, registered as an interested and affected party, declared their interests as set out in the regulations, given comment and sought the applicant to address certain issues. If the process fails to meet the requirements of the law or if a person who raised concerns in the process is aggrieved by a decision, then such a person should have the right to challenge a decision that aggrieves him/her. The removal of the qualification for who can appeal against decisions, will lead to an untenable situation where persons who have not participated in the process lodge appeals at the last moment or at advanced stages of the EIA process and thereby cause delays to the environmental authorisation process.

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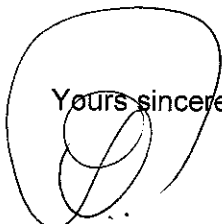
The persons with locus standi have the right to participate in the EIA process from the beginning and should use such an opportunity to have their concerns addressed and not wait until later in the stage or the end of the process. If appeals at the end of the process are allowed from people who choose to refrain from participating in the process at an earlier stage, applicants would be prejudiced, the process would take longer and would be more costly. A right to appeal by a person who has not raised and sought concerns to be addressed at appropriate stages would cause unreasonable prejudice to the applicant. The Act should encourage concerned citizens to participate in the EIA process from the inception stage. This adds value to the process and ensures that all issues and concerns are taken into account for the benefit of the environment and all the parties who have an interest in the activity.

We recommend that only persons with locus standi who have participated in the EIA process be accorded the right to appeal.

### **Paragraph 10, Transitional provisions**

The paragraph is vague and ambiguous. The drafting thereof makes it unclear for the reader to understand which Act will be applicable upon the Bill coming into effect. There is reference, at all times, to "the Principal Act as amended by this Act" and not the application or cessation of application of the Principal Act and when the amended Act will apply. "The Principal Act as amended by this Act" equates to the Bill when it becomes an Act and effective. In other words, the language is confusing and seems to refer to the same Act (the Bill when it becomes an Act) twice in different words. Applicants require clarity on the appropriate process to follow and the simplicity and comprehension of the transitional clause cannot be underestimated for practical purposes and smooth running of the EIA process.

We recommend that the section be drafted using simple language that all readers can understand in order to avoid conflicting interpretations.

  
Yours sincerely  
Dave Lucas

**CORPORATE SPECIALIST (ENVIRONMENTAL MANAGEMENT)  
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